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**AN BILLE FÁ GHLÉASANNA ÉIREANNACHA UM  
CHOMHBHAINISTIÚ SÓCMHAINNÍ, 2014  
IRISH COLLECTIVE ASSET-MANAGEMENT VEHICLES  
BILL 2014**

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**EXPLANATORY MEMORANDUM**

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**PART 1**

**PRELIMINARY AND GENERAL**

**CHAPTER 1**

*Preliminary*

*Section 1 — Short title and commencement*

This is a standard provision giving the title of the Bill and when it will come into effect. It includes a transitional provision to cater for the period before the Companies Act 2014 is commenced.

*Section 2 — Definitions*

This section contains a number of definitions of terms used throughout the Bill.

In particular it defines the term “ICAV” as meaning an Irish Collective Asset — management Vehicle as the new body corporate type which the Act is designed to allow to be formed and operated.

*Section 3 — Power to make regulations*

This section provides that the Minister for Finance may make Regulations in respect of certain specified matters, and contains the parameters within which such powers can be exercised.

*Section 4 — Expenses*

This is a standard provision relating to expenses incurred by the Minister for Finance in the administration of the Act.

**CHAPTER 2**

*Creation of ICAVs and carrying on of business*

*Section 5 — Creation of ICAV with limited liability*

This section sets out the basic purpose of the Act — to enable the formation of a new body corporate, what it can do, the objects for which it can be established, and the fact that the liability of its members will be limited.

*Section 6 — Instrument of incorporation*

This section makes provision for the basic constitutional document needed to form an ICAV and identifies particular matters that must be included in the document.

*Section 7 — Registered office and head office*

In accordance with this section every ICAV will be required to have a registered office in the State. Moreover, any changes in the location of the registered office or the head office will have to be notified to the Central Bank.

*Section 8 — Carrying on of business*

This section provides that an ICAV will require authorisation from the Central Bank to carry on the business of an ICAV, and also limits the business to that permitted to be carried on under either this Act and where applicable, the Alternative Investment Funds Regulations (AIFM Regulations) or under the Undertaking for Collective Investment in Transferrable Securities Regulations (UCITS) which govern the activities on investment funds. In essence, every ICAV will need an authorisation to carry on business either as an Alternative Investment Fund (AIF) under this Act, or as a UCITS under the UCITS Regulations.

PART 2

REGISTRATION AND AUTHORISATION OF ICAVs ETC.

CHAPTER 1

*Registration*

*Section 9 — Registration order*

This section enables the Central Bank, who will deal with all registration functions relating to ICAVs, having processed an application duly made, to make a registration order under this Chapter, the outcome of which will be to effect the incorporation of an ICAV under section 15.

*Section 10 — Application for registration order*

This section details the manner in which and the matters which must be provided in an application to be made to the Central Bank to have an ICAV incorporated. As with similar applications for other bodies, provision is included which allows the Central Bank to specify any additional information or requirements that must be provided or complied with as part of the application process.

*Section 11 — Contents of statement required by section 10(2)(b)(ii)*

This section sets out a specific number of conditions as regards the information required pursuant to the previous section and manner of submission of same to the Central Bank, and specifies certain consequences.

*Section 12 — Making of registration order*

Once the Central Bank is satisfied with the matters detailed in this and the next section, it shall make a registration order, notice of which must be given to the applicant, including an indication of the date on which it comes into effect.

*Section 13 — Requirements referred to in section 12(1)(a)(ii)*

This section sets out particular conditions that must be met by

applicants to comply with under subsection (1)(a)(ii) of the previous section.

*Section 14 — Registration of certain matters following making of registration order*

The Central Bank is required under this section to enter certain details in relation to each new ICAV in a register to be maintained by the Central Bank — the register being open to inspection by the public.

*Section 15 — Commencement of registration order*

Section 15 provides that on the coming into effect of a registration order made by the Central Bank, the ICAV subject of the order is constituted as a body corporate, having perpetual succession and with the liability of its members limited to the amount, if any, unpaid on their shares registered in their name at that time.

*Section 16 — Decision to refuse registration order*

This section requires the Central Bank to give notice to an applicant where it decides to refuse an application under section 10 for a registration order. The applicant can appeal the decision.

CHAPTER 2

*Authorisation and approval*

*Section 17 — Authorisation*

As mentioned in the context of section 8, every ICAV will need an authorisation either as an AIF or a UCITS.

The UCITS Regulations (S.I. 352 of 2011) already make provision for such authorisations. A proposed amendment to the UCITS Regulations, contained in section 132 will enable an ICAV to apply to be authorised as a UCITS.

However, in respect of an AIF, it is necessary to provide for the authorisation of an ICAV as an AIF, and this Chapter provides accordingly.

*Section 18 — Application for authorisation*

This section sets out in specific details the information that will have to be submitted by applicants to obtain authorisation as an AIF. Where considered necessary, additional information can be sought by the Central Bank, which can also require certain matters be attested as to authenticity and correctness.

These requirements mirror the details applicable to UCITS authorisations.

*Section 19 — Grant of authorisation*

This section enables the Central Bank to grant an authorisation if it is satisfied in relation to certain specified requirements being met, as set out in the section.

The section also contains requirements as regards notifications of decisions taken by the Central Bank, and in particular the date from which the authorisation takes effect.

*Section 20 — Decision to refuse authorisation*

This section sets out the basis on which the Central Bank may refuse an application for authorisation; it requires written notice of

such a decision to be given to the applicant and also provides that such a decision is appealable.

*Section 21 — Appointment and approval of depositary*

This section requires an ICAV to appoint a depositary, which itself must be approved by the Central Bank. Procedural matters in relation to this application process are set out in the section, which can include the refusal to grant approval, in which event an appeal can be made.

*Section 22 — Application for approval of management company*

This is the first of three sections dealing with the process for approval of a management company by the Central Bank, and sets out the basic requirement for such approval to be obtained, and the manner in which additional information can be required.

*Section 23 — Approval of management company*

Following from the previous section, this section provides for the Central Bank to approve a management company where it is satisfied as regards the matters specified therein.

*Section 24 — Refusal to approve management company*

Under this section the Central Bank may refuse to approve an application under section 22. The Central Bank has to give notice of such a decision and such a refusal is appealable in the manner described.

*Section 25 — Authorisation or approval not a warranty*

This section highlights the fact that the Central Bank shall not be liable for performance or default following authorisation or approval of an ICAV, management company or depositary.

*Section 26 — Revocation of authorisation*

This section contains provisions, including the procedures to be followed, where the Central Bank proposes to revoke the authorisation of an ICAV. The proposed regime mirrors that applicable to other investment funds vehicles. The objective is that ICAVs and all funds will be subject to a near uniform regime.

*Section 27 — Imposition of conditions by Bank*

Section 27 mirrors in respect of ICAVs, the powers available to the Central Bank to impose conditions on ICAVs, their management companies or depositories.

*Section 28 — Prohibition on carrying on business as ICAV unless authorised etc.*

This section prohibits any body or person from carrying on any business under a name which includes “Irish Collective Asset Management Vehicle” or “ICAV” as its last part, or make any representation in that regard.

## CHAPTER 3

### *Names and Changes in Instrument of Incorporation*

*Section 29 — Name of ICAV*

This section requires that the name of an ICAV shall end with the long title “Irish Collective Asset-management Vehicle” or the acronym “ICAV”. The Central Bank can refuse to authorise an ICAV with a name that it considers to be undesirable or misleading.

*Section 30 — Approval for change of name*

This section prohibits an ICAV from changing its name unless the change is approved by the Central Bank

*Section 31 — Alteration in instrument of incorporation*

This section prohibits an ICAV making an alteration to its instrument of incorporation without the approval of the Central Bank or its members. Where such changes are made, the ICAV has to file a copy of the instrument of incorporation containing the changes made. However, a change in the instrument of incorporation may be permitted without the express approval of its members where a depository has certified that the alteration does not prejudice the interests of the members of the ICAV and the Central Bank consents.

CHAPTER 4

*Execution of documents, seals etc.*

*Section 32 — Execution of documents*

This section provides that an ICAV can execute documents either by affixing its common seal, or by specified signatories signing the document in question.

*Section 33 — Common seal*

This section allows, but does not require, an ICAV to have a common seal, and where it has one, requires the seal to have the ICAV's name engraved on the seal.

*Section 34 — Official seal for share certificates*

Where an ICAV has a common seal pursuant to the previous section, this section allows it to have a separate seal especially for sealing shares.

CHAPTER 5

*Sub-funds of umbrella funds*

*Section 35 — Segregated liability of ICAV sub-funds*

For efficiency purposes, investment funds frequently organise their portfolios through sub-funds — this section allows such arrangements, and in particular provides segregated liability for each sub-fund, so that the assets of any such sub-fund cannot be applied to meet the liability of another sub-fund with the same umbrella fund.

This section and the two following sections mirror provisions contained in Part XIII of the Companies Act 1990 relating specifically to investment companies.

*Section 36 — Requirements to be complied with by, and other matters respecting, an umbrella fund*

Following from the previous section, this section sets out in greater detail particular requirements that must be complied with in respect of segregated funds.

The section also sets out implied terms that operate in respect of every contract, agreement, arrangement or transaction entered into by an umbrella fund, and what happens if particular situations occur.

*Section 37 — Further matters about umbrella funds*

This section contains more specific provisions relating to the manner in which sub-funds, while not separate legal entities, can nevertheless operate as if they were in the circumstances specified in this section. On the basis that each of these is cross applied to provisions of the Companies Acts relating to Winding-ups that are proposed to be cross applied by the present Bill, they will have the same effect for ICAVs as they have in respect of Part XIII companies.

PART 3

SHARES AND DEBENTURES ETC.

*Section 38 — Power to issue shares and debentures*

This section sets out the basic entitlement of an ICAV to issue shares and debentures, and contains parameters within which such issues can be made.

*Section 39 — Share certificates*

This section deals with the issue of share certificates but having regard to the particular nature of investment bodies, also allows for the instrument of incorporation to provide that certificates will not be issued, in which event written confirmation will be made in the register of members.

*Section 40 — Evidence of share certificate*

This section provides that a certificate under the seal of an ICAV is prima facie evidence of title of the member named therein to the share.

*Section 41 — Nature of shareholding*

This section provides that the interest of a member of an ICAV is personal estate rather than real estate.

*Section 42 — Transfer of registered shares*

This section lays down the basic requirement that any transfer of shares or debentures requires a proper instrument of transfer.

*Section 43 — Refusal to register transfer of shares*

This section specifies circumstances where an ICAV will be entitled to refuse to register a transfer of shares, sets out the timeframe within which it can so act, and sets out what notifications must be given.

*Section 44 — Certification of transfer of shares*

This sections deals with the certification by an ICAV of any instrument of transfer of shares and the consequences which flow from such an action, including potential liability arising from a negligently made certification.

*Section 45 — Transfer: supplementary*

This section contains supplementary provisions in relation to transfer of shares, including those which are transmitted through the operation of law, and the rights that pass on the death of any one of persons holding shares jointly.

*Section 46 — Power to purchase own shares*

This section gives the right to every ICAV to purchase its own shares, subject to certain requirements, including those as provided for in the ICAV's instrument of incorporation and in accordance with Regulations made by the Central Bank in this regard.

*Section 47 — Treatment of purchased shares*

This section requires that any shares bought back by an ICAV must be cancelled and an appropriate reduction must be made to the issued share capital for the ICAV in question. However, special provisions are set out in respect of the operation of umbrella funds, again subject to conditions imposed by the Central Bank.

*Section 48 — Membership*

This section provides that once a person agrees to become a member, and his or her name is included on the ICAV's register of members, then that person is a member of the ICAV.

*Section 49 — Register of members*

This section requires every ICAV to keep a register of its members and specifies the information that must be entered in the register and the time within which entries must be made.

*Section 50 — Inspection of register of members*

This section requires that each ICAV must keep available for inspection by the relevant statutory bodies the register of members in the State either at its registered office or at an alternative location which has been notified to the Central Bank.

*Section 51 — Consequences of failure to comply with requirements as to register owing to agent's default*

Where the register of members is maintained by an agent on behalf of an ICAV, failure by the agent to comply with the requirements regarding notifications and such like will render the agent liable to the same penalties as would apply to the ICAV itself.

*Section 52 — Rectification of register*

This section sets out the manner in which errors in the register may be rectified, and includes recourse to the High Court.

*Section 53 — Trusts not to be entered on the register*

This section prevents the entry of any trust on the register of members of an ICAV.

*Section 54 — Register as evidence*

Section 54 simply provides that the register of members is prima facie evidence of matters required to be entered in the register.

*Section 55 — Power of members to complain of oppressive conduct*

Where a member of an ICAV considers that the affairs of the ICAV are being conducted in an oppressive manner, this section provides a means for them to apply to the High Court for an order to have the matter addressed in such manner as the Court considers appropriate. The section includes a number of matters that may be addressed and the manner in which they may be given effect.

## PART 4

### DIRECTORS AND OTHER OFFICERS

#### CHAPTER 1

##### *Appointment, removal etc.*

##### *Section 56 — Number of directors*

This contains the basic requirement that every ICAV shall have two directors.

##### *Section 57 — Secretary*

This section requires every ICAV to have a secretary, or joint secretaries. A director may also be the secretary. This section also permits another person duly authorised to discharge the functions of a secretary. Other requirements in relation to the secretary are set out in this section.

##### *Section 58 — Prohibition on body corporate being a director*

Under this section, a body corporate cannot act as a director of an ICAV.

##### *Section 59 — Avoidance of acts done by person in dual capacity as director and secretary*

Under this section, any matter to be done under the Act, regulations made thereunder, or in an ICAV's instrument of incorporation, by or to a director and secretary, cannot be satisfied by the same person acting as both director and secretary.

##### *Section 60 — Validity of acts of directors*

This section provides that the acts of a director of an ICAV are valid, even where some defect in the director's appointment or qualification come to light.

##### *Section 61 — Appointment of directors to be voted on individually*

This section provides that appointments of directors at a general meeting must be voted on individually, unless a resolution has been unanimously agreed that this need not be so.

##### *Section 62 — Removal of directors*

This section provides for the manner in which a director may be removed from office before his or her term of office ends, and a replacement appointed.

It deals in particular with notices which must be given, timelines that must be observed and the opportunity of the person involved to make their position known through written representations, in dealing with such matters.

##### *Section 63 — Prohibition of undischarged bankrupt acting as officer etc. of ICAV*

This section provides that an undischarged Bankrupt cannot act as a director of an ICAV except with the leave of the Court.

##### *Section 64 — Examination as to solvency status of director etc.*

This section enables the Director of Corporate Enforcement (DCE) to seek information regarding their financial position from any person whom it believes to be acting as a director of an ICAV while being an undischarged Bankrupt.

The DCE can also request the High Court to require such a person to appear before the court and answer any questions relating to the statement so provided.

In the final analysis, the High Court can make a disqualification order in respect of such a person.

#### *Section 65 — Register of directors and secretaries*

This section requires every ICAV to maintain a register of its directors and secretaries and, if any, its deputy and assistant secretaries.

The sections sets out in precise manner, the matters that must appear on the register for each person concerned.

The manner in which notification must be made are also set out.

All changes which occur must be notified to the Central Bank within 14 days.

Each person appointed to one of the positions must sign a consent to act in the capacity concerned.

#### *Section 66 — Provisions supplementary to section 65*

This section contains supplementary requirements to those in the previous section dealing specifically with the situation where a director becomes disqualified in a country or territory outside of Ireland. This involves the obligation on the person concerned to make the information known to the ICAV and places an obligation on the ICAV to forward relevant information to the Central Bank.

#### *Section 67 — Entitlement to notify Bank of changes if section 65(6) contravened*

Where a director or secretary of an ICAV resigns, the ICAV itself is obliged to notify this fact to the Central Bank. Where an ICAV fails to make such a notification, this sections sets out the process which the director or secretary can follow to ensure the Central Bank is informed of the resignation.

#### *Section 68 — Particulars relating to directors to be shown on all business letters*

This section contains requirements regarding particular of directors which must be contained on all business letters. The section also allows the Central Bank to grant an exemption from this requirement in exceptional circumstances.

## CHAPTER 2

### *Controls on directors*

#### *Section 69 — Prohibition of tax-free payments to directors*

This section prohibits tax-free payments to directors, and specifically require any net payments of such amounts to be grossed-up and made liable to the appropriate level of income tax.

#### *Section 70 — Payment of compensation*

This section is designed to ensure that any payments by way of compensation to directors retiring or losing office must be approved by resolution of the ICAV in general meeting. Where such a payment is made in contravention of this requirement, it is deemed

to be received in trust by the director and section 73, post, provides how such funds are returned to the ICAV.

*Section 71 — Duty of director to disclose payments made in connection with transfer of shares*

Like the previous section, this section requires disclosures to be made by directors where they are likely to receive compensation as part of an offer made to the general body of shareholders involving a transfer of shares as detailed in the section.

The obligation on the director is to take all reasonable steps to ensure that particulars of the proposed payment, including the amount, is disclosed.

Where there is a failure to make the necessary disclosures, any amounts received are deemed to be held in trust. The next section provides for how such funds are to be returned to the ICAV.

*Section 72 — Sections 70 and 71: supplementary*

Expressed as being supplementary to the previous two sections, this section sets out precisely how calculations are to be made to determine the amounts that are to be regarded as the compensation paid to the director in question in the instances provided for in those two sections.

*Section 73 — Contracts of employment of directors*

The operative part of this section is contained in subsection (3), which requires approval of a term of employment for a director of greater than 5 years, which cannot be terminated by the ICAV by notice, or can be terminated only in specified circumstances, as requiring the prior approval by resolution of the ICAV in general meeting.

*Section 74 — Section 73: anti-avoidance*

This is an anti-avoidance provision, linked to the previous section, and relates to circumstances where it is proposed to extend an agreement of employment of a director of an ICAV which still has more than six months to run — essentially, the computation of the length of the new agreement is to be determined by adding the unexpired period the original agreement to the proposed time period of the new agreement for the purposes of calculating whether the five year period arises.

*Section 75 — Prohibition on loans etc. to directors and connected persons*

This section is designed to prohibit an ICAV from making any loan or quasi-loan to a director or a person connected with such a director, or from entering into a credit transaction or guarantees or providing any securities for such loans, or otherwise taking part in arrangements under which the ICAV assumes obligation or liabilities on behalf of directors or persons connected with them. The section provides that where contravention take place, the transactions are voidable at the instance of the ICAV, and also contains restitution provisions, as well as defences available to accused parties.

*Section 76 — Section 75: supplementary*

This section sets out definitions of the various terms that are used in the previous section.

*Section 77 — Section 75: connected persons*

This section is also linked to section 75, and contains a specific definition of “connected persons” for the purposes of that section.

CHAPTER 3

*Other matters*

*Section 78 — Fiduciary duties of directors of ICAVs*

Section 78 provides that a director of an ICAV shall owe the fiduciary duties set out in the following section 79 to the ICAV.

*Section 79 — Statement of principal fiduciary duties of directors of ICAVs*

Section 79 sets out in a non-exhaustive list the fiduciary duties of directors of ICAVs. The section does not create the duties but simply codifies existing duties. These two sections ensure that the directors of ICAVs are under to same common law and equitable fiduciary duties as company directors.

*Section 80 — Directors to have regard to interests of employees*

This sections imposes a general obligation of the directors of an ICAV to have regard to the interests of its employees in general, as well as the interests of its members.

*Section 81 — Register of shareholdings of directors etc.*

This section requires every ICAV to maintain in a register, in relation to each director and secretary, details of all interests held by them in shares or debentures of the ICAV in question, or in any of its subsidiary or holding companies.

Details of what information must be entered, and when and where the register is available for inspection are also set out *in extenso* in the section.

*Section 82 — Disclosure for the purposes of section 81*

This section requires a director to provide the information necessary to enable the ICAV to maintain the register mentioned in the previous provision.

*Section 83 — Declaration of interests in contracts*

To avoid potential conflicts of interest, this section requires disclosures to be made by directors of an ICAV where a director is interested in a contract with the ICAV. A general notification that a director is a member of an entity is regarded as sufficient notice in respect of any contract that the ICAV may subsequently make with that entity.

*Section 84 — Restrictions on directors of insolvent ICAVs*

The purpose of this section is to cross apply the provisions of the Companies Acts relating to the restriction of directors of companies to the directors of ICAVs, with appropriate modifications to cater for the ICAV.

Where a director is restricted, he or she can be a director of another body corporate, but any such body is subject to specific restriction, whether as regards minimum capital, that shares have to be fully paid-up, and some restrictions are placed on the entity’s freedom to avail of provisions in the Companies Acts.

This provision in effect will:

- (1) restrict directors of insolvent companies from involvement with a company or an ICAV; and
- (2) restrict directors of insolvent ICAVs from involvement with a company or an ICAV.

A register of directors that are restricted arising from proceedings involving an insolvent ICAV will be maintained by the Central Bank.

#### *Section 85 - Disqualification of directors etc.*

Similarly, the purpose of this section is to cross apply the provisions of the Companies Acts relating to the disqualification of directors of companies to the directors of ICAVs, with appropriate modifications to cater for the ICAV.

Disqualification occurs automatically upon conviction for an offence in relation to a company (or an ICAV in the context of ICAVs) or may be ordered by the Court if appropriate grounds are established upon application by the Director of Corporate Enforcement, the DPP, the Registrar of Companies (or the Central Bank in the context of ICAVs) or any member of a company (or ICAV).

A register of directors that are disqualified arising from proceedings involving an ICAV will be maintained by the Central Bank.

## PART 5

### MEETINGS

#### *Section 86 — Minutes of meetings*

This section requires minutes of all general meetings and meetings of directors of ICAVs to be prepared. Such minutes, when signed, are evidence of the proceedings unless and until the contrary is proved. Access to such records is also provided for.

#### *Section 87 — Annual general meetings*

This section requires every ICAV to hold an annual general meeting every year, and sets out timelines that must be observed. The section permits the directors to elect to dispense with the holding of an AGM, but as a counter balance, any member or members holding not less than 10% of the voting rights or the auditor of the ICAV can require the directors to hold an AGM.

#### *Section 88 — Extraordinary general meetings*

This section makes provision for directors to convene an extraordinary general meeting.

#### *Section 89 — Convening of extraordinary general meetings by members*

This section sets out the manner in which members of ICAVs can request the holding of an extraordinary general meeting, and the procedural matters associated with making such a request.

## PART 6

### CHARGES AND DEBENTURES

#### Chapter 1

##### *Interpretation*

##### *Section 90 — Definitions*

This section contains a definition of the term ‘charge’ and other terms used in this Part of the Bill.

#### CHAPTER 2

##### *Registration of charges and priority*

##### *Section 91 — Registration of charges created by ICAVs*

The section provides that every charge created by an ICAV shall be void against the liquidator and any creditor of the ICAV unless it is registered in accordance with the one-stage or two-stage procedure and derives from the Companies Act 2014.

The one-stage procedure is similar to the procedure under the current company law, namely that particulars of all charges created must be delivered to the Central Bank within 21 days of their creation. The two-stage procedure provides that an initial notice can be sent to the Central Bank stating the intention of the ICAV to create a charge followed up by a further more detailed notification within 21 days of the creation of the charge, stating that fact.

##### *Section 92 — Duty of ICAV with respect to registration under section 91 and right of others to effect registration*

Section 92 derives from the Companies Act 2014 and provides for the duty of the ICAV to register charges under section 91 and the right of other parties to effect registration.

##### *Section 93 — Duty of ICAV to register charges existing on property acquired*

Section 93 reflects section 411 of the Companies Act 2014 and deals with situations where an ICAV purchases property which is subject to a charge. Since this section only requires charges created by a company to be registered, this section is necessary to ensure that charges that were created by an individual, but for which the liability for the repayment of is assumed by an ICAV are registered by that ICAV. This ensures that the records of the charges on company property will be more complete. Failure to comply with these requirements will be an offence.

##### *Section 94 — Priority of charges*

Section 94 provides for the priority of charges of an ICAV and mirrors section 412 of the Companies Act 2014. Pursuant to this section, the operative date for priority of charges is specifically provided for as the date of registration as opposed to date of creation for instances that have not been provided for elsewhere by statute.

##### *Section 95 — Registration of judgment mortgages*

Section 95 concerns the registration and priority of judgment mortgages.

##### *Section 96 — Register of charges*

This section sets out details on the register itself and is modelled

on section 414 of the Companies Act 2014. The register will include details of the date of creation of a charge (or the acquisition of the property) and the date of receipt by the Central Bank of the information and any other matters specified by the Central Bank. The Central Bank will determine the form of the register and will make it available on a website for inspection by the public.

*Section 97 — Certificate of registration*

Section 97 provides that a certificate of registration shall be given in respect of any charge registered under this Part. This is drawn from section 416 of the Companies Act 2014. Such certificate of registration of charge shall be conclusive evidence that the requirements of this Part regarding the registration of charges have been complied with, but only insofar as they relate to charges for which particulars have been filed.

*Section 98 — Entries of satisfaction and release of property from charge*

Section 98 deals with entries of satisfaction and release of property from charge. It is modelled on section 417 of the Companies Act 2014.

*Section 99 — Extension of time for registration of charges and rectification of register*

Section 99 is based on section 418 of the Companies Act 2014 and provides for an extension of time for registration of charges and rectification of the register. The section permits an application by the ICAV or an interested person to be made to Court for late registration where there has been a failure to file the specified particulars of a charge within the 21 days where the omission was accidental or does not prejudice the interests of creditors or shareholders.

*Section 100 — Copies of instruments creating charges to be kept*

This section provides that copies of all instruments creating charges must be kept by the ICAV at the same place as the register of members and it is an offence to fail to comply with this requirement.

*Section 101 — Netting of Financial Contracts Act 1995 not to affect registration requirements*

Section 101 provides that charges must still be registered notwithstanding the Netting of Financial Contracts Act 1995 which facilitates the use of swap instruments and provides that a mortgage or charge to secure a liability under a “financial contract” is legally enforceable against the chargor.

## CHAPTER 3

### *Provisions as to debentures*

*Section 102 — Liability of trustees for debenture holders*

Section 102 concerns the liability of trustees for debenture holders and is drawn from section 423 of the Companies Act 2014. Many deeds under which trustees for debenture holders are appointed contain clauses which absolve the trustees from liability in circumstances other than wilful neglect or default. It is considered desirable that some check should be placed upon the power of trustees to escape liability for failure to carry out functions for which they receive payment. A prohibition of such indemnification

provisions, subject to certain exceptions, is therefore included in this provision.

#### *Section 103 — Perpetual debentures*

Section 103 on perpetual debentures derives from section 424 of the Companies Act 2014. That provision was introduced to overcome certain doubts about the legality of perpetual debentures. A provision making a debenture irredeemable or postponing the redemption to some distant date would amount to a “clog on the equity of redemption” thereby rendering the instrument void.

#### *Section 104 — Power to re-issue redeemed debentures*

Section 104 is modelled on section 425 of the Companies Act 2014 and gives the ICAV the power to re-issue redeemed debentures. Under subsection (2), the person entitled to the debentures shall have the same priorities as if the debentures had never been redeemed. Subsection (3) deals with situations where debentures are deposited to secure advances on current account or otherwise.

#### *Section 105 — Specific performance of contracts to subscribe for debentures*

Section 105 reflects section 427 of the Companies Act 2014 and provides explicitly that specific performance may be a remedy for a breach of a contract to take up and pay for any debentures.

### CHAPTER 4

#### *Prohibition on registration of certain matters affecting shareholders*

#### *Section 106 — Registration against ICAV of certain matters prohibited*

Section 106 provides that the Central Bank has no jurisdiction to accept or register an order of any authority (whether judicial or otherwise) affecting a shareholder or debenture holder of the ICAV or any notice of the making thereof.

### PART 7

#### ACCOUNTS, REPORTS AND AUDITING

### CHAPTER 1

#### *Accounting records*

#### *Section 107 — Obligation to keep adequate accounting records*

This section obliges every ICAV to keep adequate accounting records.

#### *Section 108 — Basic requirements for accounting records*

This section sets out the basic requirements in relation to what accounting records must be kept, such as will enable the financial position of an ICAV to be determined with reasonable accuracy, contain details on an ongoing basis, and that adequate precautions against falsification are taken.

#### *Section 109 — Where accounting records are to be kept*

This section requires that the accounting records should be kept at the registered office of the ICAV, or such other place as the directors may decide.

#### *Section 110 — Access to accounting records*

ICAVs are required under this section to keep the accounting

records available for inspection by its officers and other parties entitled to inspect the records under the present Act.

*Section 111 — Retention of accounting records*

This section requires accounting records to be preserved for six years.

*Section 112 — Accounting records: offences*

The offences for failure to maintain the necessary accounting records are set out in this section, which also contains a defence for those charged with a breach to show that other competent and reliable persons were charged with responsibility for maintaining the accounting records.

*Section 113 — Personal liability of officers where adequate accounting records not kept*

This section empowers the High Court to declare that, where failure to keep proper accounting records etc. required under the proceeding sections is considered to have contributed to an ICAV's inability to pay its debts or has otherwise substantially impeded the orderly winding up of the ICAV, one or more of the officers in default can be made personally liable, without any limitation of liability, for the debts or other liabilities of the ICAV. Detailed procedural provisions are contained in the section.

## CHAPTER 2

### *Annual accounts*

*Section 114 — Annual accounts*

This section requires every ICAV to prepare annual accounts/financial statements.

Annual accounts of an ICAV need to be prepared in accordance with one of the following:

1. generally accepted accounting practice in the State, or
2. international financial reporting standards, or
3. an alternative body of accounting standards, as prescribed.

The reference to international financial reporting standards is to Regulation (EC) No. 1606/2002.

ICAVs are allowed to choose the accounting standards they want to use, but only insofar as they are consistent with the 'true and fair' standard. The Central Bank will also be able to impose its own requirements on the accounting standards of ICAVs.

*Section 115 — Accounts to include information about directors*

This section requires details regarding directors' emoluments, pensions and compensation to be shown in the annual accounts.

## CHAPTER 3

### *Directors' report*

*Section 116 — Directors' report*

This section requires, for each financial year, the preparation of a directors' report on the activities of the ICAV — the section contains the matters that must be covered in the report.

### *Section 117 — Revised directors' reports*

This section allows the directors of an ICAV to prepare a revised directors' report where they discover that the original report did not comply with the requirements of this Act. However, the permission confines the revisions permitted where the report has already been laid before the AGM of the ICAV in question.

## CHAPTER 4

### *Audit*

#### *Section 118 — Auditor reports on accounts*

This section requires that the annual accounts/financial statements of every ICAV must be audited. The auditor needs to give his/her opinion on whether the accounts do in fact meet the 'true and fair' standard and have been properly prepared in accordance with the relevant financial reporting framework.

#### *Section 119 — Consideration by auditor of consistency of directors' report with ICAV's accounts*

Under this section, the auditor is required to report on whether the directors' report is consistent with the annual accounts/financial statements for the ICAV in respect of the same year.

#### *Section 120 — Duty of auditor in relation to suspected commission of indictable offence*

This section requires an auditor of an ICAV who comes across instances where there are reasonable grounds for believing that an officer or agent of an ICAV has committed an indictable offence under this Act, to notify that opinion to either the ODCE or the Central Bank, as appropriate. The section also sets out the manner in which the auditor, if requested, is required to co-operate with the enforcement agencies.

#### *Section 121 — Eligibility to be auditor*

The sections deals with the eligibility of persons for appointment as auditor of an ICAV. Only statutory auditors or firms within the meaning of Part IV of the Audits Regulations can become auditors of an ICAV.

#### *Section 122 — Auditor acting where ineligible*

This section creates an offence where an ineligible person acts as an auditor.

#### *Section 123 — Appointment of auditors*

This section contains specific provisions governing the appointment of auditors by ICAVs at each AGM. The ultimate default position is that the Central Bank can appoint an auditor where the ICAV fails to do so.

In addition, this section provides that the Central Bank can appoint an auditor to an ICAV in any circumstances where the ICAV has failed to do so and not just where an AGM has been dispensed with.

#### *Section 124 — Casual vacancy*

Under this section, a casual vacancy in the office of an auditor of an ICAV may be filled by the directors of the ICAV or by the members in a general meeting.

### *Section 125 — Partnerships*

Where a partnership is appointed as auditor of an ICAV, this section sets out how the appointment is to be treated and in particular whether it is the partnership practice or individual members are the auditor. The section also deals with what happens to appointments where a partnership ceases.

### *Section 126 — Auditor's access to records*

This section is designed to ensure that an auditor has full access to the accounting records of the ICAV being audited.

### *Section 127 — Rights of auditors*

This section is designed to ensure that the auditor of every ICAV receives notices of all general meetings of the ICAV, and furthermore is entitled to attend and be heard at any such meeting.

### *Section 128 — Remuneration of auditors*

This section provides that the remuneration of an auditor of an ICAV appointed at an AGM is to be fixed by the ICAV in general meeting. Where the appointment of the auditor is made by the directors or by the Central Bank, the remuneration shall be fixed by them, respectively.

### *Section 129 — Power of competent authority*

This section provides that the powers of the competent authority under Regulation 75 of the Audits Regulations will be applicable to ICAVs.

### *Section 130 — Removal of auditor*

This section makes provision for the removal of an auditor by the passing of an appropriate resolution to that effect at an AGM of the ICAV. The Central Bank must be notified of any such action. An auditor's rights to seek compensation or damages arising from such termination are not removed.

### *Section 131 — Resolution for removal of auditor*

This section sets out in some detail the procedures to be followed in relation to resolutions proposing the removal of an auditor. It also specifically entitles the auditor to make representations and seek to have these circulated to the members of the ICAV. The ICAV can apply to court not to have to circulate these where they are considered to be for the purposes of securing needless publicity.

### *Section 132 — Auditor who has been removed*

This section preserves the rights of an auditor who has been removed from office to receive notices, to attend and be heard at the meeting at which his term of office would otherwise have expired.

### *Section 133 — Resignation of auditor*

This section makes provision for the resignation of an auditor of an ICAV. In particular any notice of resignation must be accompanied by the statement required by section 136, as to whether or not there are matters that, in the view of the resigning auditor, ought to be brought to the attention of the shareholders. An effective notice brings an auditor's term of office to an end either on the date it is deposited with the ICAV or as specified in the notice.

### *Section 134 — Statement of circumstances*

This section enables a resigning auditor to request that a general meeting be held forthwith to consider all matters associated with the

auditor's resignation. Procedures are provided for the ICAV to call the meeting, for the circulation of documentation and also for an application to be made to Court where the ICAV or other aggrieved party consider that the process is being abused to secure needless publicity.

*Section 135 — Auditor who has resigned*

This section ensures that an auditor who has resigned maintains the same rights as regards a meeting to consider matters associated with his resignation as obtained in respect of general meetings of the ICAV in question.

*Section 136 — Requirements consequent on ceasing to hold office*

This section requires a resigning auditor to deposit a statement at the head office of an ICAV of circumstances associated with the resignation that he or she considers ought to be brought to the attention of the shareholders or creditors of the ICAV, or a statement of the fact that there are no such circumstances. Detailed provisions are set out to cover different scenarios, and time frames within which stated actions must be taken. An appeal may be made to the court where the ICAV considers the application is being used to secure needless publicity for defamatory matters. Any further actions to be taken are dependent on the outcome of the Court proceedings.

*Section 137 — Withdrawal of approval*

This section cross applies matters relating to the withdrawal of approval of auditors contained in the Audits Regulations applicable to auditors of companies.

## PART 8

### CONVERSIONS OF INVESTMENT COMPANY OR UCITS TO ICAV

*Section 138 — Conversion of investment company or UCITS to ICAV*

This is the first of five sections in this Part, the combined effect of which is designed to enable an existing investment company or a UCITS plc to convert to an ICAV, by way of continuation, by following the detailed procedures contained in the sections.

Section 138 sets out a number of explicit matters that must be provided, factors that must be certified by statutory declaration, and makes provision for publication of the making of the application for conversion.

*Section 139 — Declaration of solvency*

This section requires a specific declaration of solvency to be made by a director of the investment company or UCITS plc which proposes to convert to an ICAV, and all matters pertaining to the manner in which this is made and certified.

*Section 140 — Registration pursuant to application for conversion*

This section makes provision for the issue by the Central Bank of a registration order in respect of the converting investment company or UCITS plc as an ICAV, and for its consequential de-registration as a company in the Companies Registration Office. The section also spells out the legal consequences which flow from the conversion.

It also clarifies that an authorisation as a UCITS or an alternative investment fund shall continue to have effect after the conversion.

This section also cross-applies provisions of section 889 of the Companies Act 2014, which entitles the Registrar of Companies to charge fees to carry out certain functions.

*Section 141 — Further statutory declarations*

Where any material change occurs between the date of the original statutory declaration made at the initiation of the conversion process and before the issue of the registration order, a supplementary statutory declaration is required under this section.

*Section 142 — Failure to comply*

Where there is a failure to comply with the procedures and process for conversion set out in this Part, this section enables the Central Bank to have the failure rectified, holding the ultimate sanction of striking from the register an ICAV that fails to so rectify the default.

PART 9

MIGRATION

CHAPTER 1

*Migration-in to become an ICAV*

*Section 143 — Definitions*

This section gives definitions for the terms “migrating body” and “relevant jurisdiction” for the purposes of this Chapter. Due to its expansive nature, the definition of “registration documents” is now contained in a stand-alone section below. These definitions are similar to those in the Companies Act 2014. It is also provided that the Minister for Finance may, by regulation, prescribe places outside the State as a “relevant jurisdiction” in certain circumstances.

*Section 144 — Registration documents*

This section gives a definition for “registration documents”, again mirroring provisions in the Companies Act 2014. This section sets out the technical documentary requirements which a migrating body needs to comply with before it can be registered as an ICAV and authorised by the Central Bank.

*Section 145 — Continuation of migrating body*

This section sets out the principal elements of the migration process and copies the provisions of the Companies Act 2014. This section permits collective investment fund corporates registered in prescribed jurisdictions to apply to migrate their registered offices to Ireland without having to wind up in their existing jurisdiction first (although they must do so subsequently).

Migrating bodies may apply to the Central Bank to be registered as an ICAV in the State by way of continuation. Before a migrating company can be registered by the Central Bank, it must have satisfied all the requirements in this Bill in relation to registration as an ICAV. In addition, a migrating company must give the Central Bank notice of the proposed address of its registered office. Furthermore, an application from a migrating company to be registered in the State must be accompanied by a statutory declaration that states that all requirements mentioned in this section have been complied with. Subsection (8) clarifies that this section does not operate to create a new legal entity and will not affect contracts made or rights and liabilities of the migrating company or other persons.

*Section 146 — Supplementary provision in relation to section 145*

This section contains further practical requirements in relation to the registration of migrating companies in the State. The key point is that authorisation to carry on business as an AIF or a UCITS (having of course, satisfied all the relevant regulatory requirements) is automatic upon acceptance of an application to migrate.

It also provides that if an applicant fails to comply with the requirements of section 145, the Central Bank will give it 30 days to remedy the failure and if it fails to do so the Central Bank may start proceedings to strike it from the register of ICAVs.

CHAPTER 2

*De-registration following migration out*

*Section 147 — Definitions*

Section 147 provides definitions for the purposes of this Chapter on de-registration of investment companies incorporated in the State that wish to migrate to another “relevant jurisdiction”. This section mirrors the provisions of the Companies Act 2014.

*Section 148 — De-registration of ICAVs when continued under law of place outside the State*

This section contains the detailed provisions relating to de-registration of ICAVs that wish to continue as bodies corporate in prescribed jurisdictions. These provisions reflect the Companies Act 2014. Before granting de-registration, the Central Bank must be satisfied that all the requirements of this Bill in relation to de-registration have been complied with by the ICAV and that all fees and levies due to the Central Bank have been paid. The application to de-register must be accompanied by a statutory declaration stating that these requirements have been met and notice of the application must be published in the *Iris Oifigiúil*.

Creditors of the ICAV or holders of not less than 5 per cent of its issued share capital may apply for an order preventing the proposed migration and de-registration of the ICAV. The High Court may make such an order if it is satisfied that the proposed move would contravene the terms of an agreement between the company and any shareholder or creditor of the company. Alternatively, it may make the order if the proposed migration would be prejudicial to any shareholder or creditor of the ICAV.

*Section 149 — Provisions supplementary to section 148*

This section contains further provisions in relation to de-registration of an investment company under this Chapter and replicate the relevant section of the Companies Act 2014. Where an ICAV becomes registered in another jurisdiction, it must give notice of this fact to the Central Bank within three days of it becoming so registered and it must give the Central Bank notice of its new name (if any). The Central Bank will then issue a certificate of de-registration to the ICAV. Certain details relating to the de-registered ICAV must be published in the *Iris Oifigiúil*.

It also clarifies that de-registration does not operate to create a new legal entity and will not affect contracts made by or rights and liabilities of the ICAV or other persons, and provides for the continuation of legal proceedings against the migrating ICAV.

CHAPTER 3

*Section 150 — Statutory declaration as to solvency*

This section is also based on the relevant provision of the Companies Act 2014. It states that, where an application is made either by a migrating body to be registered in the State, or by an ICAV seeking to be migrate out of the State, a director of the body/ICAV must make a statutory declaration that the entity is solvent.

It also sets out requirements in relation to the making of the declaration, which must include a statement as to the assets and liabilities of the ICAV. In addition, the declaration must be accompanied by a report of an independent person giving an opinion as to the reasonableness of the opinion of the director and the statement of the assets and liabilities. It will be an offence for a director to make a declaration under this section if he or she does not have reasonable grounds for believing that the ICAV can pay its debts as they fall due. A lack of reasonable grounds will be assumed if the ICAV is wound up and is found to be insolvent within 1 year of the application to the Central Bank.

PART 10

RECEIVERS, WINDING UP, ETC.

CHAPTER 1

*Receivers*

*Section 151 — Receivers*

This section cross-applies the provisions of the Companies Act 2014 (Part 8), relating to the receivers of investment companies, to ICAVs. This is subject to any necessary modifications and ‘specific modifications’ listed in subsection (2) in order to give effect to those provisions in the context of an ICAV. ‘Necessary modifications’ are not set out in any further detail as they are modifications to be necessarily applied to the relevant sections of the Companies Acts if and when the context so requires, so that the relevant sections have application to an ICAV (for example ‘company’ would be read as ‘ICAV’ in the context of ICAVs unless specified otherwise by the ‘specific modifications’).

Receivership is a method available to a charge holder of enforcing its security and recovering monies from companies where a loan given on foot of a debenture is in default pursuant to the terms of the debenture. Depending on the terms of his/her appointment, a receiver will take possession of the charged assets, realise those assets and discharge the debt owing to the debenture holder by either continuing the business with a view to maximising the value of the company’s assets, selling the business as a going concern or selling part of the business whilst winding down the unprofitable part.

The intention of the cross-application is that parties are familiar with such procedures and all interests will understand how matters are dealt with under the company law in question.

*Winding up*

*Section 152 — Winding up*

This section cross-applies the provisions of the Companies Act 2014 (Part 11) relating to winding up of investment companies to ICAVs, subject to any necessary modifications and ‘specific modifications’ listed in subsection (2) in order to give effect to those provisions in the context of an ICAV. ‘Necessary modifications’ are not set out in any further detail as they are modifications to be necessarily applied to the relevant sections of the Companies Acts if and when the context so requires, so that the relevant sections have application to an ICAV.

Companies (and consequently also ICAVs) may be wound up by three different methods:

1. members’ voluntary liquidation,
2. creditors’ voluntary liquidation, and
3. court ordered/compulsory liquidation.

The liquidator is the person appointed to supervise and implement the company’s winding up.

The intention is that parties are familiar with such procedures and all interests will understand how matters are dealt with under the company law in question. It uses a similar approach to the one applied to section 149.

PART 11

STRIKE OFF AND RESTORATION

CHAPTER 1

*Strike off of ICAV*

Part 11 sets out the circumstances in which an ICAV may be struck from the register and the procedures for restoration. It contains provisions concerning both voluntary and involuntary strike off of an ICAV. In the case of involuntary strike off, an ICAV may take a “remedial step” in order to avert the strike off process. The concept of voluntary strike off is being placed on a statutory footing, with certain conditions being established before the process can commence.

*Section 153 — When Bank may strike ICAV off register*

Section 153 permits either the Central Bank or the ICAV itself to apply to be struck off the register of ICAVs where it is not an authorised ICAV and the conditions governing voluntary and involuntary strike offs set out in subsequent provisions have been fulfilled.

*Section 154 — Grounds for involuntary strike off*

The section set out the grounds upon which an ICAV may be involuntarily struck off the register of ICAVs by the Central Bank. The grounds include matters such as a failure to apply for an authorisation.

*Section 155 — Bank’s notice to ICAV of intention to strike it off register*

Section 155 provides that the Central Bank may notify an ICAV of its intention to strike it from the register of ICAVs in accordance with the proposed new section 156 on foot of a ground set out in section 154.

*Section 156 — Contents of Bank’s notice to ICAV*

Section 156 sets out the required contents of the Central Bank’s notice of their intention to strike an ICAV from the register.

*Section 157 — Meaning of remedial step*

Section 157 lists the ‘remedial steps’ that may be taken by an ICAV to avert the continuation of the strike off process, depending on the reason for the impending strike off. ‘Remedial steps’ is a concept that is also in the Companies Act 2014. For instance, having been granted authorisation is a remedial step.

*Section 158 — Public notice of intention to strike ICAV off register*

Section 158 of the Bill provides that the Central Bank may publish a public notice of the Central Bank’s intention to strike the ICAV from the register of companies where no ‘remedial steps’ have been taken by the ICAV since notification.

*Section 159 — Conditions for voluntary strike off*

Section 159 provides for the conditions to be fulfilled by an ICAV seeking to be voluntarily struck off the register of ICAVs by the Central Bank. For instance, the Central Bank has reasonable cause to believe the ICAV has ceased to carry on business.

*Section 160 — Public notice in case of voluntary strike off*

Section 160 obliges the Central Bank to give public notice of its intention to strike an ICAV off the register of ICAVs where it has received a valid application from the ICAV to be struck off.

*Section 161 — Striking off (involuntary and voluntary cases) and dissolution*

Section 161 provides that, where the necessary pre-conditions to both voluntary and involuntary striking off of an ICAV have been fulfilled, the Central Bank may strike the ICAV off the register of ICAVs and that the ICAV will then be dissolved upon publication of the notice of the strike off.

*Section 162 — Effect of removal and dissolution*

Section 162 details the effect of removal from the register on the ICAV, together with its dissolution. For instance, the section provides that, even where a company is dissolved, the liability of a director, other officer or member of that ICAV shall continue as if the ICAV had not been dissolved. A similar provision exists in the Companies Act.

*Section 163 — Power of Bank to obtain information*

Section 163 empowers the Central Bank to seek a statement of affairs of the ICAV or such further information from the directors of an ICAV that has been involuntarily struck off.

CHAPTER 2

*Restoration of ICAV to register*

Chapter 2 deals with restoration and the provisions here are

similar to those set out for investment and other companies in the Companies Act 2014. Restoration of an ICAV to the register is possible on application to the Central Bank or the High Court.

*Section 164 — Application of Chapter*

Section 164 provides that this chapter applies to an ICAV that has been struck off under Chapter 1.

*Section 165 — Restoration on application to Bank*

Section 165 details how an application may be made to the Central Bank to have the ICAV restored to the register within certain time limits.

*Section 166 — Restoration on application to High Court*

Section 166 details how an application may be made to the High Court to have the company restored to the register within certain time limits.

*Section 167 — Requirements for application to High Court under section 166*

Section 167 details the notice requirements for making an application to the court under section 166.

*Section 168 — Terms of High Court order on application under section 166*

Section 168 sets out specific terms to be inserted in listed instances in a restoration order made by the High Court pursuant to section 166.

*Section 169 — High Court order for restoration on application of Bank*

Section 169 permits an application may be made by the Central Bank to the High Court to have the company restored to the register within certain time limits.

*Section 170 — Supplementary High Court orders*

Section 170 outlines further orders that the High Court may make on foot of applications made under section 166 or section 169.

## PART 12

### INVESTIGATIONS, COMPLIANCE AND ENFORCEMENT

*Section 171 — Investigations*

Section 171 of the Bill provides that the provisions of the Companies Acts relating to investigations will apply to an ICAV as if the ICAV were a company, subject to any necessary and specific modifications.

Powers of the ODCE are contained mainly in Part 13 of the Companies Act 2014 (previously in Part 2 of the Companies Act 1990 and in Company Law Enforcement Act 2001). It empowers the Director to, among other things, appoint an inspector, carry out his or her own inquiry into share and debenture ownership, impose restrictions on shares in connection with an investigation or inquiry, require the production of company documents and books, and to exercise his or her powers of inquiry to assist an investigation by a foreign company law authority.

### *Section 172 — Compliance orders*

Section 172 is similar to section 797 of the Companies Act 2014. It provides for the power of the High Court to order compliance by an ICAV or officer thereof with the provisions of this Bill.

Any member or creditor of the ICAV or the Director of Corporate Enforcement may apply to the court for an order that the ICAV or officer in default of the provisions of this Bill remedy the default within a specified timeframe. In making such an order, the court may stipulate that the ICAV or the officers of it pay all the costs of the application.

Subsection (5) states that the court may not make an order under this section if it is of the opinion that the default in question constitutes a wrong done to the ICAV, which, under the general law, is actionable by the ICAV alone, unless the facts constituting the default in question amount to the commission of an offence.

This section is distinct from and will not prejudice the operation of any enactment imposing penalties on an ICAV or its officers for failing to comply with the provisions of this Bill.

### *Section 173 — Restraining directors and others from removing assets*

Section 173 confers on the Court a statutory jurisdiction to make an injunction to restrain a director or other officer of an ICAV who, it is believed, will try to place his or her or the ICAV's assets beyond the reach of the ICAV's creditors. The injunction freezes the assets of the ICAV or individual, preventing that person from removing or disposing of those assets. The court may make the order on application from the ICAV, a director, member, liquidator, receiver or creditor of the ICAV or the Director of Corporate Enforcement.

### *Section 174 — Agency with responsibility for enforcement of offences*

Section 174 sets out which agency (the Central Bank, the Office of the Director of Corporate Enforcement or both) is to prosecute which of the offences created in the Bill.

### *Section 175 — District court district within which summary proceedings may be brought*

Section 175 is based on section 866 of the Companies Act 2014 (as adapted from section 240A of the Companies Act 1990, as inserted by section 105 of the Company Law Enforcement Act 2001). This section makes provision for the District Court area within which summary proceedings against an ICAV or an officer thereof may be brought, heard and determined.

### *Section 176 — Application of other provisions relating to offences*

Section 176 cross-applies further provisions of the Companies Act 2014:

- section 867 of the Companies Act relates to the 'Period within which summary proceedings may be commenced';
- section 870 of the Companies Act relates to 'Further offence, where contravention continued after conviction for an offence, and penalties for such offence';
- section 868 of the Companies Act relates to 'Prosecution of companies on indictment';
- section 872 of the Companies Act relates to 'Court may order that convicted person remedy breach';
- section 873 of the Companies Act relates to 'Notice by Director to remedy default'.

*Section 177 — Special provisions applying where default in delivery of documents to Bank*

Section 177 reflects sections 874 and 875 of the Companies Act 2014 which were drawn from section 109 of the Company Law Enforcement Act 2001. It elaborates on the power to the Central Bank to deliver a notice to a person (an ICAV or an officer thereof) and impose fines on that person if the Central Bank has reasonable grounds to believe that the person is in default in delivering to the Central Bank a document required under this Bill.

*Section 178 — General Offences*

Section 178 cross-applies sections 876(1) and (3), 877 and 878 of the Companies Act 2014.

Section 876 concerns ‘Offence of providing false information’. It makes provision for a category 2 offence where a person knowingly gives false information or is reckless as to whether the information is false or not. Subsection (3) provides for greater maximum penalties in certain cases where the conviction is on indictment and the commission of the offence has substantially contributed to the ICAV being unable to pay its debts, or impeded the winding up of the ICAV or facilitated the defrauding of creditors.

Section 877 concerns ‘Offence of destruction, mutilation or falsification of book or document’. It provides a category 2 offence for the destruction, mutilation or falsification of a book or document affecting or relating to the property or affairs of the ICAV. It shall be a defence for a person to prove that, in carrying out the destruction, mutilation or other act concerned, that the person had no intention to defeat the process of the law. This is taken from section 243(1) of the Companies Act 1990.

Section 878 concerns ‘Offence of fraudulently parting with, altering or making omission in book or document’. It derives from section 243(2) of the Companies Act 1990 which makes it an offence to fraudulently part with, alter or make an omission in any book or document affecting or relating to the property or affairs of the ICAV.

*Section 179 — Evidential matters*

Section 179 applies sections 879 and 886 of the Companies Act 2014. References to the ‘registrar’ are to be read as reference to the Central Bank.

Section 879 concerns ‘Proof of certificate as to overseas incorporation’. It applies where the existence of a body corporate or undertaking outside the State is alleged or is otherwise in issue. It is provided that a certificate of incorporation or registration in relation to a body corporate in another country will be taken to be prima facie evidence of the incorporation or registration of that body corporate in the country concerned.

Section 886 concerns ‘Statutory declaration made in foreign place’. It re-enacts section 6 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006. It provides that statutory declarations for the purposes of the Companies Acts made overseas before Irish solicitors or local notaries or other persons authorised to take declarations are valid.

## MISCELLANEOUS

*Section 180 — Mergers involving ICAV*

This section sets out the detailed provisions to apply in the various cases of mergers involving ICAVs. An ICAV that is a UCITS (and is authorised as such in accordance with the UCITS Regulations) may merge with any other UCITS. An ICAV authorised as an AIF, under this Bill, can merge with any form of collective investment vehicle in accordance with conditions imposed by the Central Bank.

*Section 181 — Taxation*

The amendment to the Tax Consolidation Act provided for in this section will ensure that ICAVs formed under the present Bill will qualify for treatment for tax purposes in a manner similar to other investment funds authorised as UCITS and AIFs.

*Section 182 — Fees*

Section 182 is a provision to ensure that the Central Bank shall be able to charge fees in respect of the functions it carries out under this Bill.

*Section 183 — Categories of offences*

This section enumerates three categories of offences which will apply to breaches of the various provisions in the Bill that contain relevant penalties for failure to comply with requirements of particular sections. Categories 1 and 2 offences are the most serious and provide both summary and indictable penalties, while category 3 only contains summary penalties.

*Section 184 — Amendment of UCITS Regulations*

This section makes an amendment to the UCITS Regulations to permit the authorisation of an ICAV as a UCIT.

*Section 185 — Amendment of Central Bank Act 1942*

This section adds this Bill (when enacted) to schedule 2 of the Central Bank Act 1942 as a designated enactment. Inclusion in schedule 2 of the Central Bank Act 1942 has the effect, inter alia, of allowing the Central Bank to take administrative enforcement actions against the ICAV and its officers, etc.

*Section 186 — Exemption of liability void*

While this section prohibits an ICAV from exempting any officers or auditors from liability as a result of any negligence, default, breach of duty or breach of trust in for which he or she may be guilty in relation to the ICAV, it is not prevented from indemnifying such officer or auditor where judgment is given in his or her favour or in which he or she is acquitted. The ICAV can also purchase and maintain insurance cover in respect of such liabilities.

*Section 187 — Notice, etc.*

This section enables the Central Bank to serve various notices provided for in the Bill electronically.

*Section 188 — Director of Corporate Enforcement*

Section 188 cross-applies sections 953, 956 and 957 of the Companies Act 2014 which excludes the Director of Corporate Enforcement and his staff from liability for damages arising from their actions if done in good faith. It also places a duty of professional

confidentiality on the Director of Corporate Enforcement and his staff and that the Director may receive and use confidential information from an Garda Síochána, the Revenue Commissioners and other persons

#### SCHEDULE

The schedule sets out specific information that must be contained in the annual accounts required under Part 7 of the Bill.

*An Roinn Airgeadais,  
Eanáir, 2015.*